

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**  
45 Fremont Street  
San Francisco, CA 94105

**RH03029826**

**June 2, 2006**

**Title 10  
Proposed Revisions to Sections 2632.5, 2632.8 and 2632.11  
Optional Automobile Insurance Rating Factors**

Summary and Response to Comments Received During 45-Day Comment Period

Pursuant to Gov. Code § 11346.9(a)(3), repetitive comments are aggregated, summarized and responded to as a group. Comments which were not specifically directed at the proposed regulations or procedures followed in proposing the regulations are irrelevant and have been summarized and dismissed as a group.

Additionally, because some comments reflect a more technical analysis of the proposed regulations, the summaries for those comments were not summarized as a group. Comments in volumes 5 – 8 and volume 12, which contain a more extensive technical analysis of the proposed regulations have been organized and summarized by comment volume number. The responses to these technical comments have been summarized and organized by common responses, as set forth in the pages that follow.

1.

Volume:Tab Numbers of Corresponding Public Comments:

1:1-1:4, 1:6-1:27, 1:29-1:33, 1:35-1:50, 2:1-2:6, 2:8-2:22, 2:24-28, 2:30-2:43, 2:45-2:56, 2:58-2:61, 2:62, 2:64-2:75, 3:1-3:5, 3:7-3:8, 3.9\* (p.1 and 2), 3:12, 3:13, 3:15-3:21, 3:25-3:53 3:54-3:57, 4:1-4:18, 4:20-4:23, 4:25-4:27, 4:29-34, 10:1-10:8, 11:1-11:14, 12:1-12:6

(\*identical to letter 4.19)

Summary of Comments:

Lower-risk rural (or suburban) drivers should have lower rates than higher-risk urban drivers and will be disproportionately and unfairly hurt by the proposed regulations that will increase their rates and require them to subsidize drivers in large cities or urban areas.

### Response to Comments:

The Commissioner's regulations continue to permit a driver's location to be an important factor in setting insurance rates. While the proposed regulations preserve the importance of location in setting insurance rates, however, Proposition 103 provides that the factors which determine a driver's rates should be weighted in a specific order of importance. The proposed regulations will implement the weight ordering requirement of Proposition 103, which is codified in Insurance Code section 1861.02(a). The ballot pamphlet to Proposition 103 promised, in part, that "103 forces insurance companies to base your rates on your driving record first, rather than on where you live. That means good drivers throughout the state will pay less than they do now, while bad drivers will pay more." The ballot pamphlet also establishes that "In general, the measure requires that rates and premiums for automobile insurance be determined on the basis of the insured person's driving record, miles driven and number of years of driving experience." Finally, in the clearest possible terms, section 1 of Proposition 103 declares under the heading "Findings and Declaration" that "automobile insurance rates shall be determined primarily by a driver's safety record and mileage driven." To the extent that the cost of insurance may increase for some low income drivers and may affect businesses in rural or urban parts of the state, the increase will be determined primarily by the driver's safety record, mileage driven and years of driving experience, as Proposition 103 intended.

While some commentators believe that territory is the most important characteristic for determining the likelihood of an accident, there are other equally important, if not more important considerations which insurers often neglect under the existing regulations. Driving safety record, for example, is a very strong predictor of the risk of loss for an accident. Similarly, annual mileage driven bears a strong correlation to the risk of loss for an accident. The Department commonly observes instances where insurers do not collect meaningful data regarding the correlation between some of the mandatory factors and the risk of loss. One rating factor where insurer data is lacking is the mandatory factor of annual mileage driven. By way of example, the Commissioner has observed that one insurer arbitrarily places insurers into one of merely two categories: drivers that drive less than 7,500 miles per year and drivers who drive more than 7,500 drivers per year. Other examples show similar neglect for data collection regarding the mandatory factors. The existing regulations do not encourage insurers to develop better data collection for the mandatory rating factors, because they allow insurers to fall back on the crutch of territory for auto rating. The proposed regulations will stimulate insurers to conduct better data collection for mileage and driving safety record. This, in turn, will enhance the relationship to the risk of loss between those rating factors and the rates developed under the proposed regulations.

2.

Volume:Tab Numbers of Corresponding Public Comments:

1:2, 1:5, 1:6, 1:8, 1:11, 1:12, 1:29, 1:31, 1:41, 1:42, 2:6, 2:7, 2:10, 2:16-2:22, 2:24-2:27, 2:31, 2:36-2:38, 2:40, 2:41, 2:45, 2:47, 2:48, 2:50, 2:52-2:56, 2:58, 2:60, 2:63, 2:66-2:69, 2:71, 2:72, 2:74, 2:75, 3:3, 3.9 (p. 2). 3.11, 3:12, 3:15-3:20, 3:24, 3:25, 3:27, 3:29-3:34, 3:37, 3:39-3:41, 3:45, 3:47-3:52, 3:55, 3:56, 4:1, 4:4, 4:6, 4:8-4:13, 4:17, 4:18, 4:20-4:22, 4:25-4:27, 4:30-4:34, 10:2, 10:4-10:8, 11:1-11:14, 12:1-12:6

Summary of Comments:

Many drivers (and counties) in rural areas already are facing economic hardship and limited transportation alternatives and the proposed regulations will hurt such drivers even more by raising their auto insurance rates or cause them to forego auto insurance;

Given the generally high unemployment, large number of people with low or fixed income, high gasoline prices, and other economic problems in many low population density areas, drivers there can least afford increases in their auto insurance premiums.

Response to Comments:

See Response to #1, above.

Additional Response to Comments:

While the proposed regulations may have favorable effects for urban poor areas, this is not the primary purpose for the proposed regulations. The primary purpose of the proposed regulations is to implement Proposition 103 and Insurance Code section 1861.02 in the way that the Commissioner believes is most consistent with the intent of the voters. Specifically, the proposed regulations will ensure that driving safety record, annual miles driven and years of driving experience will be the three most important factors in a consumer's premium computation.

The Commissioner has considered the impact upon both rural and urban drivers in the state. After receiving a petition for rulemaking in May of 2003, the Commissioner personally attended seven informational meetings in regions of the state ranging from Fresno and Chico to Los Angeles and Oakland to discuss the potential impact of the proposed regulations upon rates for urban and rural regions of the state. The Commissioner observed numerous instances – in rural as well as urban locations – where drivers with identical characteristics would pay unjustifiably different premiums simply because they live in the "wrong" zip code.

For example, the Commissioner has observed substantial variations in premium not only for consumers living within just a few miles of each other, but even for neighbors who

live in adjoining zip codes. In fact, the differentials in territory relativities between adjacent zip code pairs for some companies do not closely follow the patterns of the industry wide pure premium data. In looking for examples of arbitrary rates and premiums, one need look no further than the premiums established under the existing regulations. Examples such as these demonstrate that the existing regulations are neither purely cost-based nor consistent with Proposition 103's distaste for zip code rating. The Commissioner's proposed regulations will prevent similar disparity between zip codes in the future, by requiring insurers to give more consideration to how you drive rather than where you live. Not only does this approach make sense, it is the approach that the Proposition 103 ballot pamphlet promised to the voters.

Drivers in rural and urban locations will have substantial control over the cost of insurance. Because the proposed regulations will require driving safety record and annual miles driven to be the most important characteristics for auto insurance rating, a driver's rate in both rural and urban locations will depend primarily upon factors within the driver's control. For example, many commentators have stated that high gas prices have harmed poor residents. To the extent that Californians in both rural and urban settings drive less due to the cost of gas, those drivers will benefit from lower insurance rates due to the effect of the annual mileage rating factor, which will have greater importance under the proposed regulations.

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3.

Volume:Tab Numbers of Corresponding Public Comments:

1:1, 1:7, 1:10, 1:11, 1:15, 1:29, 1:47, 1:49, 2:3, 2:4, 2:14, 2:16, 2:17, 2:28, 2:30, 2:33, 2:36, 2:39, 2:42, 2:62, 2:63, 3:1, 3:4, 3:5, 3:8, 3.9 (p.1), 3:10, 3:12, 3:19, 3:37, 4:28, 4:32, 4:33, 10:1, 10:4-10:8, 11:3, 11:7-11:13, 12:4-12:6

Summary of Comments:

Rates should be cost-based or substantially related to the risk of loss.

Response to Comments:

This comment contends that unlike the existing regulations, the proposed regulations will not be cost based and/or substantially related to the risk of loss.

The Court in *Spanish Speaking Citizens' Foundation v. Low* concluded that the language in Insurance Code section 1861.02(a)(4) which requires optional factors to be "substantially related to the risk of loss" also requires that the mandatory factors, and their order of importance must be substantially related to the risk of loss. The Commissioner notes, however, that Insurance Code section 1861.02(a)(4) expressly

makes reference to the optional factors alone. Indeed, the Commissioner believes that Proposition 103 sought to bring fairness to automobile insurance rates, in part, by requiring the mandatory factors of driving safety record, annual miles driven and years of driving experience to assume greater weight than the optional factors irrespective of the mandatory factors' relationship to the risk of loss. While the Commissioner disagrees with the Court's interpretation of Insurance Code section 1861.02(a)(4) and the meaning of "substantially related to the risk of loss", the Commissioner recognizes that the *Spanish Speaking* decision represents the current state of the law, and his response takes into account the Court's interpretation in *Spanish Speaking*.

Notwithstanding the Commissioner's interpretation of Insurance Code section 1861.02(a)(4), the *Spanish Speaking* Court determined that for purposes of the weight ordering mandate, "interpretations that preserve a substantial relationship between premiums and the risk of loss ... are [] to be favored over those that would produce arbitrary rates." (*Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1227.) The commentator contends that the existing regulations are substantially related to the risk of loss, but that the proposed regulations are not and therefore are invalid. The fundamental assumption here is that the present rate regulations ensure cost-based rating. This assumption is demonstrably incorrect.

First, Proposition 103 as well as other laws reflect the voters' and Legislature's intent that public policy objectives must often prevail over considerations of cost-based pricing. For example, many insurers contend that a policyholder's lack of a history of prior insurance bears a strong correlation to the risk of an automobile accident. Despite insurers' preference for using the absence of prior insurance as a rating factor, Insurance Code section 1861.02(c) prohibits its use. (See, e.g., *Foundation for Taxpayer and Consumer Rights, et al. v. Garamendi* (2005) 132 Cal. App. 4th 1354.) Other examples of laws which require public policy to take precedence over an argument of cost-based pricing abound. (See, e.g. Ins. Code section 11628 & 679.71 [sex, race, color, religion, national origin, or ancestry cannot by itself constitute a risk for which a higher rate may be charged].) Directly at issue, Insurance Code section 1861.02 requires that automobile rates be determined by applying "in decreasing order of importance" the mandatory factors of driving safety record, annual mileage driven and years of driving experience, followed by any optional factors adopted by the Commissioner. Thus, concerns about cost-based pricing and the relationship to risk of loss often must yield to greater concerns of public policy, as reflected in the weight ordering requirements mandated by section 1861.02(a).

Moreover, the Department has observed numerous examples of rates which are not cost-based under the existing regulations, both within the course of this rulemaking proceeding as well as during its review of rate filings submitted to the Department. The Department's Rate Filing Branch commonly receives rate filings from insurers under the current regulatory system in which the insurers select rate assignments that do not reflect the cost of providing the insurance. For example, although an insurer's loss experience might require an indicated rate relativity for a particular zip code for a cost-based rate,

insurers commonly select different rate relativities which markedly deviate from the indicated rate relativity.

While the existing regulations do not result in rates that are purely cost-based, the Court in *Spanish Speaking Citizens* concluded that regulations which "preserve a substantial relationship between premiums and the risk of loss ... [are] to be favored over those that would produce arbitrary rates." (*Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1227.) The proposed regulations, like the existing regulations, do not reflect rates which are in lockstep with a given insurer's loss experience. This situation exists not only because Proposition 103 dictates that some public policy objectives must often override the relationship to the risk of loss, but also because insurers often prefer to select rates which are different from the insurer's loss experience. Nevertheless, the proposed regulations, like the existing regulations, do preserve a substantial relationship between premiums and the risk of loss, and therefore cannot be considered arbitrary or contrary to Insurance Code sections 1861.02(a) and 1861.05.

Similarly, some commentators contend that rating factors which are enhanced or diminished (i.e. – "pumped" or "tempered") to bring the factors into the appropriate weight order are not cost-based and therefore not substantially related to the risk of loss. Under the existing regulations, however, the Department has observed instances of rate filings in which insurers "pump" the mandatory factor of years driving experience, so that they can increase the influence of zip code on an insured's rate. Indeed, State Farm's comments regarding this rulemaking proceeding recognize that the existing regulations could require pumping or tempering in some cases. Just as the Department recognizes that public policy objectives may take precedence over cost-based rating, the Department recognizes that rates can still be substantially related to the risk of loss despite the fact that some rating factors are pumped or tempered as necessary to bring the rating factors into the correct weight order required by Insurance Code section 1861.02.

Because the proposed regulations ensure that zip code (territory) may be as high as the fourth-most important factor in calculating an insured's premium, rates will still be substantially related to the loss costs associated with a particular region of the state. The Commissioner's proposed regulations achieve the most appropriate balance among the objectives of Proposition 103. Unlike the existing regulations, the proposed regulations ensure that rates will be determined primarily by driving safety record and mileage driven, while still permitting other optional rating factors with a substantial relationship to the risk of loss to have a significant influence on premiums.

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4.

Volume:Tab Numbers of Corresponding Public Comments:

1:1-1:3, 1:8, 1:12, 1:14-1:16, 1:20, 1:29, 1:36, 1:49, 2:1, 2:10-2:13, 2:16, 2:17, 2:28, 2:51, 2:60, 2:62, 2:63, 3:18, 3:20, 3:21, 3:37, 4:4, 4:14, 4:23, 4:28, 4:32, 11:1-11:8, 11:18, 12:3, 12:6

Summary of Comments:

Zip codes or drivers' locations should be an important factor in setting rates.

Response to Comments:

See Response to # 1, above.

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5.

Volume:Tab Numbers of Corresponding Public Comments:

1:2, 1:3, 1:11-1:13, 1:15, 1:17, 1:32, 1:37, 2:7, 2:13, 2:25, 2:34, 2:38, 2:58, 3:5, 3:7, 3:19, 3:30, 3:35, 3:37, 3:43, 4:16, 10:8, 11:1, 11:2, 11:6, 11:7, 11:11, 12:3, 12:5

Summary of Comments:

Good drivers (including those in rural/suburban areas) will be hurt by the proposal.

Response to Comments:

See Response to # 1, above.

Additional Response to Comments:

While the Court of Appeal in *Spanish Speaking Citizens v. Low* concluded that the current regulations are lawful, the Court also acknowledged that a method identical to the Commissioner's proposed regulations may also represent a permissible interpretation of Proposition 103. To the extent that the commentator suggests that the current regulatory system produces lower premiums for more good drivers, the Commissioner disagrees, as he has observed substantial evidence to the contrary. Indeed, because the proposed regulations ensure that how you drive will be more important than where you live, it is axiomatic that more good drivers in both urban as well as suburban and rural locations

will experience rate decreases under the proposed regulations than under the current regulatory system.

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6.

Volume: Tab Numbers of Corresponding Public Comments:

1:3, 1:11, 1:13, 1:18, 1:20, 2:26, 2:36, 2:41, 2:47, 2:63, 3.9 (p.1 and 2), 3:13, 3:23, 4:20, 4:24, 11:1-11:3, 11:5, 11:6, 11:8, 12:5

Summary of Comments:

Impact on rural/suburban drivers' rates should be further evaluated, not ignored;

Additional hearings should be held outside of San Francisco;

There should be more public debate on the rate increases and the Department should consider all the alternatives to the proposed regulations (e.g., expanding the Low Cost Auto program).

Response to Comments:

The Commissioner has considered the impact upon both rural and urban drivers in the state. After receiving a petition for rulemaking in May of 2003, the Commissioner personally attended seven informational meetings in regions of the state ranging from Fresno and Chico to Los Angeles and Oakland to discuss the potential impact of the proposed regulations upon rates for urban and rural regions of the state. The Commissioner observed numerous instances – in rural as well as urban locations – where drivers with identical characteristics would pay unjustifiably different premiums simply because they live in the "wrong" zip code.

For example, the Commissioner has observed substantial variations in premium not only for consumers living within just a few miles of each other, but even for neighbors who live in adjoining zip codes. In fact, the differentials in territory relativities between adjacent zip code pairs for some companies do not closely follow the patterns of the industry wide pure premium data. In looking for examples of arbitrary rates and premiums, one need look no further than the premiums established under the existing regulations. Examples such as these demonstrate that the existing regulations are neither purely cost-based nor consistent with Proposition 103's distaste for zip code rating. The Commissioner's proposed regulations will prevent similar disparity between zip codes in the future, by requiring insurers to give more consideration to how you drive rather than where you live. Not only does this approach make sense, it is the approach that the Proposition 103 ballot pamphlet promised to the voters.



The Commissioner appreciates the invitation to hold additional hearings in other locations, but respectfully declines the invitation. The Commissioner held numerous meetings throughout the state in 2003 and 2004 and obtained a substantial amount of public input from Californians living in both rural and urban settings. (See RH03029826 Rulemaking File Public Comments, Vol. 8, Tabs 1&2, Exhibits 1-7.) Based in part upon the public comments received during those meetings, the Commissioner developed the proposed regulations.

The Commissioner strongly supports the Low Cost Automobile Insurance Program and other laws which are designed to make insurance available and affordable. These laws, however, do not represent alternatives which would be as effective and less burdensome in carrying out the requirement of Proposition 103 that driving safety record, annual miles driven and years of driving experience are assigned the greatest importance for automobile rates. The proposed regulations are necessary to uphold this requirement of Proposition 103 and represent the proper balance of Proposition 103's multiple aims, for the reasons described in Response to Comments numbered 1 and 3, above.

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7.

Volume:Tab Numbers of Corresponding Public Comments:

1:6, 1:17, 1:18, 1:20-1:22, 1:24-1:28, 1:30-1:34, 1:37-1:40, 1:42-1:44, 1:46-1:48, 1:50, 2:9, 2:11, 2:12, 2:15, 2:23, 2:25, 2:27, 2:36, 2:39, 2:42, 2:43, 2:58, 2:63, 2:70, 2:71, 3:5, 3:7, 3:9 (p.1), 3:20, 3:23, 3:29, 3:32, 3:37, 3:39, 3:47, 3:48, 3:55, 4:3, 4:5, 4:11, 4:23, 4:28, 10:4, 10:6-10:8, 11:4, 11:8, 11:13, 12:1, 12:4

Summary of Comments:

The Downer and Mercer Studies (or other studies/reports/news articles) indicate that the proposed regulations will lead to rate hikes affecting many drivers and many (e.g., 52 of 58) counties.

Response to Comments:

At the outset, it is important to point out that any projection of premium that a particular consumer or even a particular region of the state may pay due to the proposed regulations is a matter of substantial speculation. The Commissioner's proposed regulations provide a significant degree of discretion to insurers to decide upon the most prudent manner for implementing the proposed regulations. This discretion exists, in part, because the proposed regulations permit insurers to use any combination of pumping or tempering of rating factors necessary to achieve the order of importance required by section 1861.02(a). Because different insurers will use different rating factors and different methods for achieving compliance with the proposed regulations, it would be virtually impossible to perform a study which would show the precise effect that the proposed

regulations will have upon premiums for Californians statewide. Generally speaking, the Commissioner's proposed regulations grant an insurer broad discretion to implement the proposed regulations, so long as a given insurer's rates assign the greatest weight to 1) driving safety record, followed by 2) annual miles driven, followed by 3) years of driving experience, followed by 4) any optional rating factors, weighted individually. While some studies have projected an average rate change for a particular region of the state, the impact of such projection upon a particular consumer will vary significantly due to the unique characteristics of each consumer. Additionally, to date, no study has explored all of the possible methods by which any given insurer may choose to comply with the proposed regulations. For each of these reasons and others, any comment which suggests that premiums will raise or lower for a particular region of the state by an average of X% is purely speculative and fails to ignore the unique nature of each driver's characteristics as well as the unique manner in which each insurer will choose to comply with the regulations.

This comment includes a figure that suggests a particular County's drivers will receive rate increases of a particular size due to the Commissioner's regulations. To the extent that this comment is referring to the Mercer Actuarial Consulting, Inc. study, the figure appears to have been derived from "Instruction set 3" which was designed to replicate the results of a study performed by Robert Downer. As explained below, the Downer study does not represent an accurate portrayal of the impact of the proposed regulations on Californians' auto rates. Instruction sets 1 and 2, by comparison, showed substantially different and more favorable premium changes for good drivers in all regions of the state.

To the extent that this figure comes from a study produced by Robert Downer, it is important to note that the Downer study produced substantially flawed results which do not represent a reasonable projection of the way in which insurers will comply with the proposed regulations. The Downer study chose to diminish the effect of (i.e. – "temper") any optional factor that was greater than the factor of years of driving experience. At the same time, the Downer study did not permit the possibility of increasing the effect of (i.e. – "pumping") other factors, or a combination of diminishing some factors and increasing others. The proposed regulations, like the existing regulations, permit any insurer to pump or temper any rating factor as necessary in order to achieve compliance. This procedure was not implemented by Mr. Downer's study and directly resulted in the substantial premium shifting projected by Mr. Downer. The Downer study, in short, does not accurately reflect the manner in which insurers will implement the proposed regulations. Because the findings in the Downer study do not accurately reflect the manner in which insurers may implement the proposed regulations, they are irrelevant and consequently have been rejected by the Commissioner.

Mr. Downer's comments regarding the proposed regulations include a new study which he apparently performed in February of 2006. For the reasons described above, this study, like the Mercer data and Mr. Downer's previous study, are constrained by the same limitations and to a reasonable degree of certainty will not reflect the methods of pumping and tempering that individual insurers will use to comply with the proposed regulations.

As with many of the figures cited in similar comments submitted to the Department, the figures cited in this comment do not bear a reasonable relationship to the likely rate impact of the proposed regulations. The percentage increase in rates described by this commenter appears to be based upon the results of the Downer study and the related results of Instruction set 3 from the Mercer Study. As explained above, the Downer study produced substantially flawed results, because Mr. Downer's analysis simply tempered the weight of the optional rating factors, without allowing for the pumping of mandatory factors. In other words, Mr. Downer's analysis sought to place the burden of the entire shift in a consumer's rate on territory without adjusting other rating factors to affect the rate. The Commissioner's regulations, however, do not condone such an approach. In fact, the Commissioner's regulations envision that insurers will do more than merely temper those factors, such as territory, which are weighted too heavily under Proposition 103. The Commissioner's regulations also seek to force insurers to pump, i.e. - give greater consideration to factors such as years licensed, annual mileage driven and driving safety record – factors that insurers have traditionally placed less emphasis on, when compared to the emphasis placed upon territory.

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8.

Volume: Tab Numbers of Corresponding Public Comments:

1:15, 1:17, 1:35, 2:63, 2:74, 4:5, 10:2-10:7, 11:1-11:8, 11:10, 11:13, 11:14, 12:1, 1:44-46

Summary of Comments:

The proposed regulations will have a negative impact on businesses (including rural/agricultural operations), economic development, and/or nonprofit organizations serving the public.

Response to Comments:

While the Commissioner has performed an assessment of the economic impact on California business enterprises and individuals in accordance with Government Code section 11346.3, the Commissioner is also cognizant of the limitations inherent with respect to such assessment, due to the complexity of insurance ratemaking. The Commissioner is confident that his assessment of the impact upon businesses and individuals is more than adequate, given the limitations of such assessment due to the constant evolution of individual insurers' class plans. The Commissioner's assessment recognizes that some degree of uncertainty will necessarily persist, due to the degree of flexibility that insurers are given in their class plan filings in order to comply with the proposed regulations, in addition to the adjustments which individual insurers will necessarily make to their class plans as they calibrate their rates to comply with the

proposed regulations. It is highly doubtful that further study would bring further clarity to the effect of the proposed regulations. At best, it is likely that further study would only reconfirm an assessment the Commissioner has already made. At worst, it would unnecessarily delay the Commissioner's efforts to complete this rulemaking proceeding that has been the subject of a pending petition for rulemaking since 2003.

To the extent that small farmers and other rural organizations and businesses utilize vehicles under a commercial automobile policy, the proposed regulations will not have an effect upon the driver's rates. To the extent that a small farmer or other rural organization or business relies upon private passenger automobile insurance for work performed, consumers who compare prices before purchasing personal automobile insurance may find that they will qualify for a lower insurance rate.

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9.

Volume:Tab Numbers of Corresponding Public Comments:

1:8, 1:23, 1:29, 2:1, 2:63, 3:37, 3:42, 3:47

Summary of Comments:

The auto rating factors currently being used by the industry are lawful (under Prop. 103);

The proposed regulations violate *Spanish Speaking Citizen's Foundation v. Low*.

Response to Comments:

Although the Court in *Spanish Speaking Citizens* considered the standards of Proposition 103 and concluded that rates which deviated from cost-based pricing would violate Proposition 103's prohibition against arbitrary rates, the Court also conceded that "there may be no one single correct interpretation" of Proposition 103's competing requirements. (*Spanish Speaking Citizens' Foundation v. Low* 85 Cal.App.4<sup>th</sup> 1179, 1231.) The Court also acknowledged that the existing regulations do not ensure that rates will be determined primarily by driving safety record and mileage driven, as the ballot pamphlet to Proposition 103 intended. (*Spanish Speaking Citizens* 85 Cal.App.4<sup>th</sup> at 1237-38.) Recognizing the competing goals of Proposition 103, and the fact that rates are not determined primarily by driving safety record and mileage driven, the Court noted that an interpretation of Proposition 103 identical to the interpretation set forth in the Commissioner's proposed regulations, "may be a permissible interpretation of [section 1861.02]." (*Spanish Speaking Citizens* 85 Cal.App.4<sup>th</sup> at 1239.)

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10.

Volume:Tab Numbers of Corresponding Public Comments:

1:19, 2:2, 2:4, 2:6, 2:14, 2:23, 2:26, 2:59, 2:63, 2:71, 3:30, 3:35, 3:37, 3:42, 3:50, 4:1, 4:7, 4:8, 4:17, 10:6-10:8, 11:1-11:13, 12:5, 12:6

Summary of Comments:

The regulations appear to be (or are) politically, economically, or racially motivated for the benefit of the Insurance Commissioner and/or the auto insurance industry.

Response to Comments:

See Response to Comment #1, above.

Additional Response:

Proposition 103 and Insurance Code section 1861.02 require that driving safety record, annual miles driven and years of driving experience must be the most important rating factors for an automobile policy. The existing regulations do not ensure that these factors are the most important. The Commissioner's motivation in adopting the proposed regulations is neither political nor economic in nature. Nor is the Commissioner's decision to propose these regulations designed to benefit the Commissioner or the auto insurance industry. Rather, the proposed regulations are motivated by the requirements of Proposition 103.

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11.

Volume:Tab Numbers of Corresponding Public Comments:

1:9, 3:19, 11:2, 11:8, 11:11

Summary of Comments:

Auto insurance rates should be based primarily on your driving record, not where you live.

Response to Comments:

Comments in support of the regulations. Therefore, no response is required.

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12.

Volume:Tab Numbers of Corresponding Public Comments:

2:2, 11:2, 11:3, 11:4, 11:6

Summary of Comments:

Insurance rates should be determined primarily by urban/suburban locations, high-risk drivers 16-21-years old, and accident-prone drivers;

Rates should be based on accident history and not mileage driven;

Rates should be based on location and driving record;

The regulations should use annual auto mileage or a flat gasoline fee (or tax) instead of the proposed rating factors;

A smaller rate increase should be spread across the board.

Response to Comments:

While many commentators have suggested that various rating factors should bear the most importance in determining a policyholder's auto insurance rate, the importance of rating factors is generally defined by law. The proposed regulations are designed to properly implement applicable law and ensure that driving safety record, annual miles driven and years of driving experience will be the most important rating factors. For the reasons described in Response to Comment numbers 1 & 3 above, the proposed regulations are required by Proposition 103 and Insurance Code section 1861.02. While some commentators believe that different rating factors should be more or less important, the Commissioner intends to implement the order of importance set forth by Proposition 103.

While the Commissioner does not take a position on the commentator's proposal, it is important to note that the Commissioner lacks the authority to impose a gasoline tax.

Finally, because insurers are given significant discretion to decide upon the best way to implement the proposed regulations, it is up to individual insurers to decide whether rate increases will be necessary, or whether a reduction in the base rate for all policyholders is appropriate.

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13.

Volume:Tab Numbers of Corresponding Public Comments:

1:9, 3:19, 10:8, 11:8, 12:5

Summary of Comments:

Rather than changing auto insurance rates, the Department's focus should be on enforcing existing laws (e.g., cracking down on uninsured motorists).

Response to Comments:

While the Commissioner agrees that enforcement of existing laws is important, it is the Commissioner's view that the existing regulations do not properly implement Insurance Code section 1861.02 and Proposition 103. The proposed regulations, therefore are necessary to properly implement existing law. To the extent that the commentator suggests that the Commissioner should regulate issues unrelated to the automobile rating factors, such as cracking down on uninsured motorists, those comments meet the definition of "irrelevant" in Government Code section 11346.9(a)(3) and do not require a response.

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14.

Volume:Tab Numbers of Corresponding Public Comments:

11:1, 3:37

Summary of Comments:

The proposed regulations will hurt the insurance marketplace or cause insurers to lose money.

Response to Comments:

The Commissioner does not believe that the proposed regulations will cause insurers to lose money. The proposed regulations will reflect a revenue neutral change for a given insurer. The selection of rating factors, ordering of rating factor weights and decisions regarding the relativities to be used within each rating factor do not, by themselves, alter the total amount of premium that an insurer will collect. In fact, the application of rating factors to policyholders is simply the method by which the company decides how much

of the total premium collected by the insurer should be allocated to each policyholder. This is the principle of revenue neutrality.

To the extent that the commentator believes that policyholders who receive reductions in their rate will seek to purchase greater coverage or vice-versa, the commentator does not rely upon any data for this statement. It appears that the commentator's suggestion is merely speculative at this point. While the Commissioner will continue to carefully observe the automobile insurance marketplace after the proposed changes take effect, he does not expect the proposed regulations to undermine the financial strength of the automobile insurance market.

For the reasons stated in Response to Comment 1 above, the Commissioner is confident that the proposed regulations will still be substantially related to the risk of loss, and therefore will not result in improper risk distribution for insurers.

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15.

Volume:Tab Numbers of Corresponding Public Comments:

1:9, 2:29, 2:44, 3:22, 3:54, 9:1-9:19, 10:6, 10:7, 11:5, 11:14, 12:5, 12:6

Summary of Comments:

Comments in support of the regulations (no changes to the proposed regulations recommended).

Response to Comments:

No response required.

16.

Volume:Tab Numbers of Corresponding Public Comments:

2:4, 2:6, 2:20, 2:36, 2:37, 2:59, 2:60, 2:61, 2:68, 3:4, 3:15, 3:18, 3:31, 3:32, 3:45, 3:46, 3:52, 3:56, 4:13, 4:17, 4:31, 9:1, 9:2, 9:14, 9:16, 10:4, 10:5,10:6, 11:1, 11:2, 11:4, 11:5, 11:6, 11:9, 12:1, 12:3, 12:5, 12:6

Summary of Comments:

Each of the volumes and tabs referenced above included comments that were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Examples of such comments follow:



- “We here [in a rural county] already have a big problem with uninsured and underinsured drivers and a cultural group that just passes cars from one person to another without changing ownership and in case of an accident there is no driver in the vehicle and none near the vehicle. Also we still have a lot of Oregon licenses on residents vehicles here. This raise will probably see an increase in Oregon residents living and working here.”
- Commenter urges that the problem of uninsured drivers who buy insurance in order to register their vehicles but then immediately allow their policies to lapse be addressed by requiring insurers to notify DMV when policies terminate.
- Commenter objects to being required to purchase CSAA Road Service plan as a condition to being insured by CSAA.
- Commenter is opposed to industry-sponsored initiatives designed to curtail consumer protections afforded by Proposition 103.
- Changes in Blue Shield rate tables accelerate health premium hikes based on age more dramatically than heretofore.
- Minimum required coverage levels for auto insurance are outdated and too low.
- Although there “must be a line some where,” there are so many zip code based rate areas that it appears the auto industry is merely seeking profits, as opposed to covering their expenses.
- Home and commercial insurance rates are rising while coverage is cut.
- Generally the insurance industry spends too much money on peripheral matters including charitable donations, corporate sponsorships, high level staff offices, lavish buildings, and large spending accounts; the Department should force the industry back to fair rates.
- Mercury Insurance’s claims handling process is questionable. The Department should investigate the company with regard to more than just rates. The Department should deputize consumer advocates in order to perform the duties with which it is charged.
- Commenter opposes changing Proposition 103 and asserts that insurers currently make enough money.
- The Department should develop a realistic system whereby one can’t register a vehicle or renew a driver’s license without proof of insurance.

Response to Comments:

Comments were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov. Code section 11346.9(a)(3).)